

USDA Consultative Group Comments
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April 30th, 2010

I. Introduction

On behalf of the Global Issues Group (“GIG”), a global working group to address labor practices in cocoa farming,¹ we are pleased to submit the following comments to the U.S. Department of Agriculture (USDA) regarding efforts to eliminate the Worst Forms of Child Labor (“WFCL”) and forced labor in the production of cocoa in Cote d’Ivoire and Ghana; examples of certification systems that have been successful in reducing WFCL or forced labor in the cocoa supply chain; and the roles and responsibilities that may be appropriate for business and other sectors in establishing independent, third party monitoring and verification systems. These comments respond to USDA’s Federal Register notice published on March 11, 2010, 75 Fed. Reg. 11512.

II. The U.S. Department of Labor’s Listings and USDA’s Consultative Group Mandate

Since the publication by the U.S. Department of Labor on September 11, 2009 of its *List of Goods Produced by Child Labor or Forced Labor* under the auspices of the Trafficking Victims Protection Reauthorization Act of 2005 (“TVPRA” list), as well as the publication of the

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(1): The Global Issues Group (GIG) is an ad-hoc group convened in September 2001 by the major chocolate and cocoa industry companies and affiliated trade associations specifically to address the labor challenges in the cocoa sectors of West Africa as articulated in the Harkin-Engel Protocol. Its members are Cadbury, Ferrero, The Hershey Company, Kraft Foods, Mars Incorporated, Nestlé, ADM Cocoa, Barry Callebaut, and Cargill, with affiliated organizations including the National Confectioners Association of the U.S. (NCA); Association of the Chocolate, Biscuit and Confectionery Industries of the European Union (CAOBISCO); International Confectionery Association (ICA); European Cocoa Association (ECA); and the World Cocoa Foundation (WCF).

draft list of products subject to federal procurement restrictions under Executive Order 13126 (EO list), interest within the stakeholder community having involvement in global supply chains has naturally focused on both listing and de-listing criteria for the goods that were cited, and in the agricultural community, on whether certification activities are in fact able to provide a "guarantee" or other strict assurances that commodities are produced or manufactured without the use of WFCL or forced labor.

In light of the listings, the recommendations of USDA's Consultative Group on best practices to reduce the likelihood that imported agricultural products are produced without the use of WFCL or forced labor have taken on a special significance. It is clear that the Group's recommendations will serve as an important baseline in the U.S. Department of Labor's ultimate guidance to the business sector, origin governments, and other stakeholders on necessary prerequisites to reduce child labor in agricultural supply chains, as well as the demonstration of appropriate and effective interventions designed to alleviate inappropriate labor practices.

But the Group itself should operate only against its original mandate. According to statute, the mandate of USDA's Consultative Group is the development of recommendations relating to a standard set of practices for independent, third-party monitoring and verification for the production, processing, and distribution of agricultural products or commodities (Section 3205(c)(1)). The statute is clear on its face that the Group is to develop guidelines and recommend standard practices that would be capable of "independent, third party" monitoring, not to develop a government sponsored certification or verification program, or even pilot recommendations for a government sponsored certification or verification program.

The Senate Agriculture committee report to accompany S. 2302 (S. Rept. 110-220) reinforces this understanding:

Section 3105. Voluntary certification of child labor status of agricultural imports.

This section amends section 414 of the Agricultural Trade Act of 1978 (7 U.S.C. 5674). It requires the Secretary of Agriculture, in cooperation with the Secretary of Labor, to develop standards that importers of agricultural products into the United States could choose to use to certify that those products were not produced with the use of abusive forms of child labor.

Before issuing recommendations, the Group needs to be clear on its goals. Does the Group intend to provide recommendations on best practices that could feed into existing private certification programs, such as Fairtrade, Rainforest Alliance and Utz? Or would the Group move beyond its mandate and recommend an accreditation process managed by USDA with which independent certifiers would have to register in the future, in order to attest to USDA that they were meeting these recommended guidelines for child labor reduction going forward? While it appears that Congress intended that monitoring and verification should be left to the private sector, it's essential that the USDA Consultative Group define its objectives before taking any action, even issuing a public statement. Only if it defines its objectives clearly can we then determine whether its actions match the defined objectives, or whether it is overreaching.

To be clear, the global chocolate and cocoa industry has and continues to consistently condemn the WFCL and the use of forced or indentured child labor in the cocoa supply chain or any supply chain. Our commitment to eliminate the WFCL and forced labor in the cocoa sector was made early, and our experience is relatively unique. In September 2001, global chocolate

and cocoa industry representatives, in partnership with United States Senator Tom Harkin and Representative Eliot Engel, signed a public and historic agreement to work towards the elimination of the worst forms of child labor in the growing of cocoa beans and their derivative products from West Africa. The agreement, known as the "Harkin-Engel Protocol," laid out a series of date-specific actions to achieve that goal, including the development of a public “certification” system for cocoa farming.

Over the last nine years, the industry, in conjunction with the governments of Ghana and Cote d’Ivoire and international civil society partners, has worked towards the implementation of this public certification system. These efforts have been ground-breaking in scope as they represent the first effort that we are aware of to address the issues of WFCL across an entire small, family farm based agricultural sector in a developing country. At the same time, many of the companies in our global working group have begun pilot participation in third party private product based certification efforts. Both the public and private certification efforts in our sector can serve as a baseline to realistically assess what can be achieved, and what is most effective in driving change. We comment here on the role of public and private certification processes as effective tools to drive changes in labor practices but with genuine limitations regarding their ability to guarantee compliance; and on the role of business in supportive partnership with origin governments, donor governments including the United States, and key international organizations including the Organization of Economic Cooperation and Development (OECD) and the Economic Community of West African States (ECOWAS) as the ideal model for sustainable change in labor practices in developing countries' agricultural sectors.

III. Challenges in the cocoa sector and in small holder agriculture

In considering challenges in implementing public and private certification processes in agriculture, and in the cocoa sector in particular, we touch briefly on the complexities of small holder production in an underdeveloped rural context. In West Africa, Latin America and Southeast Asia, cocoa is a labor intensive “cash crop,” providing income to more than 3 million families worldwide on an average farm size of 2-4 hectares. There are more than 2 million family farms in rural West Africa alone, the source of more than 70 percent of the global cocoa supply. Much as it was 100 years ago, cocoa farming remains a small, family enterprise with the average farm size at just a little over an acre of land. The majority of cocoa farms are independently owned and run, with under 15 percent of the crop in Cote d'Ivoire and 10 percent of the crop in Ghana produced in conjunction with government sponsored and/or privately organized cooperatives.

The sector faces a number of challenges, and the supply chain itself is complex. Cocoa farms are not owned by the companies that make chocolate products or process cocoa beans, and the industry itself does not engage in contractual arrangements with individual farmers. In fact, the cocoa marketing structures are tightly controlled and regulated by origin governments. In Cote d'Ivoire, for example, cocoa exporters are prohibited from dealing directly with farmers. Cocoa beans are purchased through intermediaries and may pass through many hands before they get to the port and the ultimate end user. Given cocoa's prominence as a critical component of the overall national GDP, it is not surprising that the governments of Cote d'Ivoire and Ghana are highly engaged in the cocoa sector – they are responsible for the granting of purchasing licenses

to buyers, and have instituted tax and fee systems that impact the price that farmers in country receive for their efforts.

On the 2009 Human Development Index, Ghana ranks 152 out of 182 countries, and Cote d'Ivoire ranks 163. We see challenges in the cocoa sectors in both countries similar to those seen elsewhere in countries with a similar development profile: stubborn and engrained social conditions associated with endemic poverty, which is a primary root cause of children working in agriculture. At the community level, throughout the cocoa sectors in West Africa, there is a lack of both infrastructure and education. Children living and working on these farms do so in a subsistence agricultural context. In many cases, from the point of view of the parents, the work of children on the farm is cited as beneficial to their future development and their longer-term ability to manage their own adult livelihoods, with the parents themselves often lacking any formal education. A holistic approach to development in these communities, which focuses specifically on sensitizing communities to the appropriate role of children at home as well as in the community, is required. For many families, a change in outlook and behavior is necessary that is fundamental and difficult to quantify.

IV. Public Certification under the Protocol

In the case of cocoa, the Harkin-Engel Protocol requires “the industry, in partnership with other major stakeholders, to develop and implement credible, mutually acceptable, voluntary industry-wide standards of public certification... that cocoa beans and their derivative products have been grown and/or processed without any of the worst forms of child labor.” At the time the Protocol was signed, there was no roadmap to design “standards of public certification.” The process had to be created to operate within the existing frameworks and capacity of cocoa

production and marketing practices for both Ghana and Cote d'Ivoire, and provide coverage of the entire cocoa sectors of both countries.

Since 2001, the Harkin-Engel public certification system has been developed to include a four-step process of data collection, public reporting of data collection results, remediation, and independent verification. It is a certification process intended to drive broad scale change that is national in scope. It has seen a number of important successes: the first being the publication of national surveys by the governments of Ghana and Cote d'Ivoire detailing the incidence of child labor and forced labor practices in their respective cocoa sectors. Those reports have been independently verified through an international verification board as accurate pictures of the incidence of child labor and forced labor in the sector. The surveys have, in turn, served as catalysts for the governments of Ghana and Cote d'Ivoire to create their own National Action Plans and international partners' forums, and have successfully focused international attention, effort, and resources to support cocoa families and children. While the process continues to evolve, Senator Harkin and Representative Engel publicly support this four-part model to drive national level change (letter to industry, March 19, 2008).

Although the industry is proud of the work done under this public certification process, a distinction must be drawn on the issue of traceability. The Protocol itself does not call for farm to bar "traceability," as some have argued. The length and complexity of the cocoa supply chain, including the number of intermediaries involved in moving several million metric tons of cocoa from farms to port, makes it impossible to accurately trace every bean produced in country from the farm to the finished product. Further complicating the issue of traceability is the practice of combining beans from different farms - and entire villages - in the early stages of the supply chain as a result of the limited transportation infrastructure in the cocoa sector. Once comingled,

the ability to identify preserve a cocoa bean to an individual farm is lost. The Harkin-Engel process certification is intended to drive broad scale change without providing a guarantee about any individual beans or conditions on any specific farm

V. Private, third-party product certification

While the Harkin-Engel Protocol is a “process certification” (i.e. evaluation, report, and remediation on sector-wide labor practices and conditions in cocoa producing countries), third party product certification identifies smaller quantities of cocoa and cocoa products produced in accordance with economic, social and environmental criteria that are developed by a private certification organization, and which purport to offer the consumer a level of assurance on particular product attributes. These products carry a label designating the inclusion of "certified" raw ingredients.

Major international certification organizations including Fairtrade, Rainforest Alliance, and Utz Certified and are now active in the cocoa sector in West Africa, and all are working to develop capacity, and train and organize farmers to meet a specific code of conduct supported by internal and external assessments. While all of these private certification efforts address labor sensitization and training, they do not provide day-to-day monitoring of labor practices. Because of this, none of the three major "product certifiers" have claimed to offer a guarantee with respect to labor practices. These private certification efforts face the same immutable facts: millions of farmers and their families are on remote farms. There are no walls or guards or monitors that can track the beans from pod to village to chocolate bar. With respect to traceability, while there can be a level of traceability in the beans produced in these projects, it is not full traceability, bean to bar, but traceability from the co-op (or similar organization) level up.

A recent white paper distributed by the Fairtrade Labeling Organization (FLO) recognizes that truly accurate traceability is not realistic, and no one can “guarantee” under what conditions particular beans were grown. It noted:

Child Labour is a very complex and intractable issue. . . . This principle is the starting point for a series of interventions through our own resources or in collaboration with other to help tackle the problem. . . No person or organization can simply guarantee that child labour does not occur in the supply chain.

FLO’s Position Paper on Child Labor, page 3, available at [http://www.fairtrade.net/single_view1.html?&tx_ttnews\[tt_news\]=129&cHash=3e23e04ba4](http://www.fairtrade.net/single_view1.html?&tx_ttnews[tt_news]=129&cHash=3e23e04ba4) (March 17, 2010).

The industry in fact does not know of any system that currently, or in the near term, can guarantee the absence of child labor, including trafficked labor, in the production of cocoa in West Africa. Like the Harkin-Engel public certification model, the private certification systems are based on a set of minimum requirements and progress requirements – in other words, on a system of continual improvement.

Presently, unlike public certification, private certification operates as a competitive proposition in which individual companies can engage. It is important to note that at this time, it is a niche effort; according to best public estimates, third party certified product makes up less than five percent of the total volume produced by the sectors of Ghana and Cote d’Ivoire. It is also important to note that third party certifiers are not simply able to “plug in” product certification parameters to the current production system; while public certification has been implemented in close collaboration with the origin governments, questions are still outstanding from the origin governments about how private certification fits in their national production and marketing organizations. Ongoing communication with producer governments is vital to gain further support, coupled with systematic capacity building.

VI. Evolution of the Sector and Role of the Origin Governments

While the scope of the work differs, industry firmly believes that both the system of public certification under the Harkin-Engel Protocol, as well as private product certification models (Fairtrade, Rainforest Alliance, UTZ Certified) play a vital role in improving conditions in the cocoa sector, which ultimately is the shared goal of all participants. Successful lessons shared from both certification systems will provide much needed information to enhance efforts on the ground, and ultimately offer consumers a higher level of assurance about the labor conditions associated with the products they consume.

Yet there is no silver bullet. What is key to the success of both public and private certification models is the close collaboration each requires with the origin governments, donor governments, and key international stakeholders. The global cocoa industry working group (GIG) has seen that sustainable, effective intervention activity must come as the result of a partnership with the origins on behalf of their citizens and their children. Neither public nor private certification is a simple technical exercise. Relationships within families must be addressed with cultural sensitivity. The national interests and economic well-being of sovereign nations bring serious political considerations. Careful support from governments must be solicited to build effective partnerships for broad scale intervention, with thought given to how certification activity fits with and ultimately benefits national sector development strategies. Ultimately, the capacity building in country that is required is a long term effort, which will only work with the strong collaboration of industry, governments (African and others), and civil society. USDA's Consultative Group can assist this process by recognizing and recommending activities that support successful origin government engagement, and collaborative programs that

positively incentivize sectors and countries that move positively towards genuine and credible efforts to address labor issues in their supply chains with U.S. government aid and assistance.

VII. Conclusion and Recommendations

Certification processes in agriculture, as opposed to a factory context, are still in an iterative process of learning and refinement. It is critical that stakeholders maintain realistic expectations regarding the focus, scope, and outcomes of both public and private certification efforts; and neither set of certification processes should distract from the need to focus on remediation and effective on the ground program development to address root cause issues. Further, in the cocoa sector it must be recognized and accepted that children are working within a family and community environment of rural agriculture. With that as a base, community sensitization and improving the coordination of a range of interventions can produce positive results.

USDA's Consultative Group recommendations must allow for the continual evolution of both public and private certification systems. We should continue to build on the work and efforts underway – not create a new system. Care should be exercised to create a coordinated U.S. Government approach to this issue, so that origin governments trying to engage are not subject to multiple and competing prescriptive agendas from a number of different U.S. agencies. Origin governments and sectors which are making progress should be further incentivized with U.S. political and financial support.

Based on the industry's experience, any recommendation by the USDA Consultative Group should recognize:

1. Agricultural supply chains, such as cocoa, are complex and unique.

Agricultural marketing structures vary across the world, even in the same commodity, and are often strictly controlled by sovereign governments. While labor monitoring programs may be

easily be replicated globally in a manufacturing setting, a labor monitoring program in agriculture will need to take into account the unique challenges posed by individual commodity streams and the countries in which they are marketed.

2. Any consideration of a traceable, farm-level monitoring system where each and every farm is audited must take into consideration those commodity supply chains that contain millions of small shareholder farms.

3. Currently, there are several private and public certification systems used in the cocoa sector alone. None of them can guarantee an absence of the WFCL. All of them contribute to improving conditions for children. We believe it would be unwise for the USDA Consultative Group by prescription, to place an increased and unproven value on one system over another, as we believe the various systems are complementary. None of them can realistically be used to cover the millions of family farms across vast stretches of rural territory any time in the near future.

4. The Group's recommendations should be mindful of the work being done by origin governments to address the issue of child labor, and where national plans exist, allow for coordination and support of these national plans in conjunction with international partners and stakeholder forums of the type that the Organization of Economic Cooperation and Development (OECD) and the Economic Community of West African States (ECOWAS) represent.

The industry, the governments of Ghana and Cote d'Ivoire, and their international development partners expect to see reductions in child labor over the long term as communities institutionalize community based monitoring systems, sensitization activities are scaled up, and sustainable remediation programming helps to drive increased awareness and the delivery of

infrastructure and capacity building enhancements. Both the industry and the governments recognize that there is more work to do, but their commitment is strong.

It is critical to recognize that the pieces we have identified here – public and private certification efforts, origin government national action plans, and international remediation programs – while vital component parts, will not on their own effect lasting change. Each element, taken alone, is significant, but it is the integration of these efforts that is required to make the necessary change in the sectors that will ultimately benefit the children and all others in these communities. Creating unrealistic expectations around the ability of the various stakeholders to deliver complex, costly, and untested government sponsored monitoring and verification programs may in fact impede the work that has been on-going for the last decade in the cocoa sectors of West Africa. It is only by working together in a spirit of trust and collaboration in high functioning partnership that we can change the lives of the millions of children and families in cocoa.

Submitted on behalf of

Global Issues Group (GIG)

National Confectioners Association of the U.S. (NCA)

Association of the Chocolate, Biscuit and Confectionery Industries of the European Union
(CAOBISCO)

European Cocoa Association (ECA)

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World Cocoa Foundation (WCF)